



East
Northamptonshire
Council

Finance Sub Committee – 24 June 2013

Proposed Fee for Monitoring of Section 106 Agreements

Purpose of report:

To consider introducing a fee for the monitoring of S106 Agreements.

Attachment(s) – None

1.0 Introduction

1.1 The purpose of this report is to consider the introduction of a new fee related to monitoring of Section 106 Agreements.

2.0 Background

2.1 The Council currently enters into a number of Section 106 Agreements each year as part of the determination of planning applications. At the present time the Council requires that the developer/applicant pays the legal services costs incurred by the Council in preparing and executing the Section 106 Agreement. However, it does not require a fee payable as part of the S106 Agreement to enable the council to cover its costs in monitoring the agreements.

3.0 Proposal

3.1 Section 106 Agreements can include a number of clauses requiring the developer to, amongst other things:

- Pay monies towards infrastructure and community requirements
- Provide land for infrastructure uses

As part of these requirements there will often be “trigger points” during the development which, when reached, require the payment of a percentage of the monies or other actions.

3.2 The monitoring of all the current outstanding S106 Agreements is undertaken in Planning Services. Depending on the complexity of the S106 Agreement, the number of clauses and the number of trigger points in the agreement, monitoring can be time consuming. However, the DCLG’s best Practise Guide makes it clear that monitoring is an essential part of the best practise in Para 2.14 of the Guide and is on the Best Practise Checklist

3.3 It is therefore proposed that it is appropriate to consider the implementation of a clause within each of the s106 Agreements to cover at least some of the cost of monitoring. Such a charge would be designed only to cover existing costs of monitoring and must be simple and straight forward and be seen to be fair and equitable.

3.4 The collection of a fee for the monitoring of S106 Agreements is undertaken by some local Authorities. Local examples are:

- Northamptonshire County Council Transport and Highways services
- Corby Borough Council - for S106 Agreements for residential developments the charge equates to £1,500 per trigger point, e.g. the 100th house occupied would be classed as the first trigger point, 200th house occupied would be classed as the second trigger point. There is no monitoring fee for S106 Agreements for commercial developments.
- Wellingborough Council – for S106 Agreements 5% of total of the obligations in the S106 Agreements. No fee for Unilateral Obligations.
- Northampton Borough Council – for S106 Agreements – sliding scale charged depends on application type and number of obligations. £76.21 per hour.

3.5 The proposal is therefore to charge a monitoring fee for every trigger point in a S106 Agreement that is signed following the agreement of this Committee of £750 per trigger point. This would be a one-off fee payable at the signing of the S106 Agreement. This proposed fee is based on the current number of trigger points that are being monitored at present and the average weekly amount of time the officer who monitors the trigger points spends on that activity

3.6 At some point in the future the Community Infrastructure Levy may be introduced by the Council and at that time this monitoring fee will need to be reviewed in the light of the impact of the CIL arrangements.

4.0 Equality and Diversity Implications

4.1 None.

5.0 Legal implications

5.1 Under section 106(1) of the Town and Country Planning Act 1990 the Council may require a sum or sums to be paid to it on a specified date or dates or periodically, so in general terms the Council has the power to take the recommended action. However, local authorities have to have regard to the Secretary of State's general policy (Circular 05/05) that planning obligations, including those that require payments are directly related to the development proposed and are fairly and reasonably related in scale (Paras B8 and B9) and therefore the level of any fee must be justifiable in relation to the development. Under the Community Infrastructure Levy regulations regulation 122 this policy is now in force. The level of monitoring fee proposed is modest and the recommendation is that is further closely related to the development by being charged "per trigger" so the legal opinion is that both in principle and in detail the proposals are lawful.

6.0 Risk management

6.1 No risks have been identified.

7.0 Financial implications

7.1 This proposal will provide a small revenue income to the Council to offset administrative costs in monitoring the Agreements.


8.0 Corporate Outcomes

8.1 The corporate outcomes to which this proposal contributes are:

- Good Value for Money
- Effective Management

9.0 Recommendation

That the fee set out in paragraph 3.5 of this report be approved for implementation from 25 June 2013.

Legal	Power: Section 106 Town and Country Planning Act 1990 and Regulation 22 of the Community Infrastructure Levy Regulations.					
	Other considerations: None					
Background Papers: None						
Person Originating Report: Elizabeth Wilson Interim Head of Planning Services 01832 742218 ewilson@east-northamptonshire.gov.uk						
Date: 15 th May 2013						
CFO 13.6.2013			DMO		CX 13.6.2013	